

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 CHRISTINE E. GERBER-WILLIAMS,

10 Plaintiff,

11 v.

12 AURORA LOAN SERVICES, LLC, et
13 al.,

14 Defendants.

CASE NO. C11-5393BHS

ORDER DENYING
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER

15 This matter comes before the Court on Plaintiff Christine E. Gerber-Williams's
16 ("Gerber-Williams") motion for temporary restraining order (Dkt. 7). The Court has
17 reviewed the brief filed in support of the motion and the remainder of the file and hereby
18 denies the motion for the reasons stated herein.

19 **I. PROCEDURAL HISTORY**

20 On May 23, 2011, Gerber-Williams filed a complaint against Defendants Aurora
21 Loan Services LLC, Mortgage Electronic Registration Systems, Inc. ("MERS"), and
22 Cal-Western Reconveyance Corporation of Washington ("Cal-Western") requesting
23 declaratory and injunctive relief. Dkt. 1.

24 On May 25, 2011, Gerber-Williams filed certificates of service for Defendants
25 Aurora Loan Services, LLC, and Cal-Western. Dkts. 4 & 5.
26
27
28

1 On May 27, 2011, Gerber-Williams filed a motion for temporary restraining order
2 (Dkt. 6) and a motion for preliminary injunction (Dkt. 7). The preliminary injunction is
3 noted to be heard on the Court's June 24, 2011 calendar. No Defendant has appeared or
4 responded to either motion.

5 On May 27, 2011, Gerber-Williams submitted an affidavit of hardship. Dkt. 8.
6 On June 6, 2011, Gerber-Williams filed an emergency affidavit stating additional facts in
7 support of her motion for temporary relief. Dkt. 10.

8 **II. FACTUAL BACKGROUND**

9 Gerber-Williams claims that she is the owner of the properties located at 12121
10 and 12123 108th Ave Ct. E, Puyallup, WA 98374 ("Property"). Dkt. 6, ¶ 10. She claims
11 that Cal-Western has scheduled a trustee's sale of the Property for June 24, 2011. *Id.* ¶ 9.
12 She claims that the Property consists of two rental properties and that losing the income
13 from the rental properties would cause her "financial hardship." Dkt. 8 at 1.

15 **III. DISCUSSION**

16 The court may issue preliminary injunctive relief where a party establishes (1) a
17 likelihood of success on the merits, that (2) it is likely to suffer irreparable harm in the
18 absence of preliminary relief, that (3) the balance of hardships tips in its favor, and (4)
19 that the public interest favors an injunction. *Alliance for the Wild Rockies v. Cottrell*,
20 632 F.3d 1127, 1137–38 (9th Cir. 2011); *Winter v. Natural Res. Def. Council, Inc.*, 129 S.
21 Ct. 365, 374 (2008). A party can also satisfy the first and third elements of the test by
22 raising serious questions going to the merits of its case and a balance of hardships that
23 tips sharply in its favor. *Alliance*, 632 F.3d at 1137–38.

24 In this case, Gerber-Williams has failed to meet her burden for temporary relief.
25 First, she has failed to show that she is likely to succeed on the merits of her claim.
26 While she does claim that MERS is an improper beneficiary under the Washington Deed
27 of Trust Act, she has failed to show that this is a viable claim. It is true that the question
28


1 has been certified to the Washington Supreme Court (*Vinluan v. Fidelity Nat'l Title &*
2 *Escrow Co.*, No. 10-2-27688-2); it is also true, however, that this Court has consistently
3 found this claim to be without merit. *See, e.g., Freeston, v. Bishop, White & Marshall,*
4 *P.S.*, 2010 WL 1186276 (W.D. Wash. 2010).¹

5 Second, Gerber-Williams has failed to show that she is likely to suffer irreparable
6 harm in the absence of relief. The Property in question is her rental property and not her
7 own home. The Court finds that the loss of rental income is not irreparable harm.

8 IV. ORDER

9 Therefore, it is hereby **ORDERED** that Gerber-Williams' motion for temporary
10 restraining order (Dkt. 7) is **DENIED**.

11 DATED this 13th day of June, 2011.

12
13
14 
15 BENJAMIN H. SETTLE
16 United States District Judge
17
18
19
20
21
22
23
24
25
26

27 ¹ The order was recently upheld by the Ninth Circuit in a memorandum opinion.
28